

## § 300.228

may provide special education and related services directly, by contract, or through other arrangements.

(ii) The excess cost requirements of § 300.202(b) do not apply to the SEA.

(b) *Manner and location of education and services.* The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the locations (including regional or State centers) as the SEA considers appropriate. The education and services must be provided in accordance with this part.

(Authority: 20 U.S.C. 1413(g))

### § 300.228 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under § 300.705 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(h))

### § 300.229 Disciplinary information.

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous discipli-

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nary action that has been taken against the child.

(Authority: 20 U.S.C. 1413(i))

### § 300.230 SEA flexibility.

(a) *Adjustment to State fiscal effort in certain fiscal years.* For any fiscal year for which the allotment received by a State under § 300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§ 300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and § 300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(b) *Prohibition.* Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under § 300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.

(c) *Education activities.* If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.

(d) *Report.* For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary—

(1) The amount of expenditures reduced pursuant to that paragraph; and

(2) The activities that were funded pursuant to paragraph (c) of this section.

(e) *Limitation.* (1) Notwithstanding paragraph (a) of this section, an SEA